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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,702	08/26/2003	Christopher Leger	2912-001	4046
42389	7590	10/05/2004	EXAMINER	
DORT CLOSE IP LAW GROUP PLLC BOX 66148, WASHINGTON SQUARE STATION WASHINGTON, DC 20035			HESS, DANIEL A	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/648,702

Applicant(s)

LEGER ET AL.

Examiner

Daniel A Hess

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/23/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6, 15-16 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawalec et al. (WO 01/97597 A1).

Re claim 1: Kawalec et al. teaches (page 1, paragraph 1) a marker such as for tree trunks, which would imply that the tree is a live tree in the forest. There is (page 3, paragraph 3) radio frequency identification (RFID); i.e. there is capacity for reading by a portable RFID tag reader: the reader obtains info from the tag. The encoded information (page 3, paragraph 3) can include the ‘kind of wood’ (page 4, line 4) which would be relevant to forestry management. Information is not only read but is modifiable by the reader (page 5, line 12).

Re claim 2: See figure 1/ abstract. Such a tag would have little impact on a tree.

Re claim 3: The tag may be ‘invisible’ (page 4, line 18). Note the limitation ‘minimal visual mark’ is somewhat subjective.

Re claim 4: See claim 1: The tag may be inserted into the trunk.

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Re claim 5: Insertion at the base of a standing tree would be the most standard place, because it is the only place that is reachable to a person standing on the ground. In addition, the reference 'PFC', discussed below, teaches this explicitly.

Re claim 6: Data may be 'read and modified by a reader' (page 5, line 12).

Re claim 15: Kawalec et al. uses RF.

Re claim 16 : Kawalec et al.'s device is (see abstract, e.g.) a transponder, which is passive.

Re claim 19: See discussion re claim 6, above.

Re claim 20: See discussion re claim 1, above.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the

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various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kawalec et al. in view of Cybulski et al. (US 6,669,089).

Kawalec et al. is used to track lumber, but does not teach that a scanner is mounted on a vehicle, a lumberyard entrance, a lumberyard building or a truck inspection station.

Cybulski et al. teaches (figure 7 is exemplary) a series of interrogators 280 mounted on a forklift 290 for interrogating that which the forklift is transporting. Such interrogators could certainly interact with RFID transponders in lumber that is being carried.

In view of Cybulski et al.'s teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include an interrogator on a vehicle because this allows a warehouse employee to rapidly and accurately order the products and materials in the warehouse.

5. Claims 7-13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawalec et al, in view of an Internet article from 5/9/02 by the University of

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Washington Precision Forestry Cooperative entitles "RFID". The article, which the examiner uncovered in reviewing the file of a similar case, US App. No. 10/414,595, will be hereinafter referred to as PFC.

Re claim 7: Kawalec et al. fails to teach explicitly the use of a tree identifier in the tag.

PFC teaches (last line of first page) that each tag has a unique number.

In view of PFC's teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known storage of a tag bearing an identifier because this enables individual trees to be tracked for conservation purposes.

Re claims 8, 10 and 12: Kawalec et al. does not explicitly recite association of the tags to a remote database on a computer, although such an association is very likely present in Kawalec et al.'s system.

PFC includes (third section on the first page, continuing onto the second) a discussion of 'database possibilities' in which a database associates an ID stored on the tag with information about that tree in a database, the database being clearly on a computer that is remote from the trees.

In view of PFC et al.'s teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known database system located on a remote computer system because this enables ranges and other individuals to study forests at a distance on their own time.

Re claims 9 and 11: Kawalec et al. fails to explicitly show managing trees via the tag and associated database data.

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PFC teaches (second and third subsections under RFID main heading) the use of tags to track conservation easements, which clearly constitutes tree management.

In view of PFC's teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made and employment data which relates to tree management because this furthers a goal stated in PFC of tree management.

Re claim 13: This is inherent in PFC: The scanning system reads the tag; this data must be interchanged with the database through some link.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kawalec et al. in view of Shafer (US 6,700,491).

Kawalec et al.'s system is passive.

Many tags, including Shafer's, are active.

In view of Shafer's teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the old and well-known active transponder means because an active transponder can yield a stronger signal and greater range.

Remarks

7. *It should be noted that the Internet article referring to Precision Forestry Cooperative (PFC) above could also be used as a 102e reference for most of the claims above.*

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Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carlson (US 2003/0218060) and Pickett et al. (US 6,671,698) are each relevant and have provisional dates that precede the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

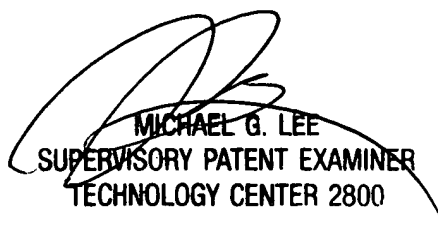
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DH

Daniel A Hess
Examiner
Art Unit 2876



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